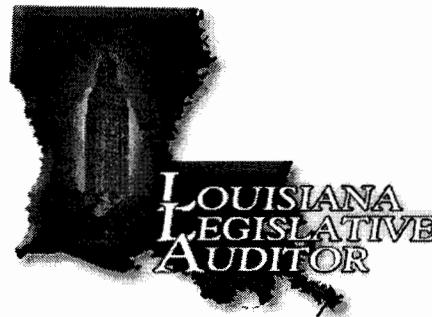


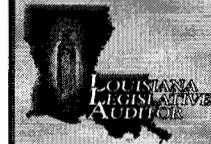
# FEMA Training



Training Presented by:  
Louisiana Legislative Auditor

May 08, 2006

## Legal Basis for FEMA Reimbursement



Presented by:  
Rachel Saltzberg  
Staff Attorney

May 08, 2006

## The Law Still Applies



3

## Local Government Budget Act

- R.S. 39:1301, et seq.
- Each political subdivision shall prepare a comprehensive budget
- Public hearing for political subdivisions with proposed expenditures of \$500,000



4

## **Local Government Budget Act**

- Amendment adopted in open meeting
  - Total revenue + projected revenue less than budgeted revenue by 5%
  - Actual + projected expenditures exceed budgeted expenditures by 5%
  - Change in operation



5

## **Public Bid Law**

- Public Works Contract
  - "the erection, construction, alteration, improvement, or repair of any public facility or immovable property owned, used, or leased by a public entity" (R.S. 38:2211(A)(12))
- Contract for Purchase of Materials or Supplies



6

## Public Works Contracts

- All public work exceeding \$100,000, including labor and materials, shall be advertised and let by contract to lowest responsible bidder (R.S. 38:2212)



7

## Materials and Supplies

R.S. 38:2212.1

- Less than \$10,000
  - No bid requirement
- Between \$10,000 and \$19,999
  - Three phone or fax quotes
- \$20,000 or greater
  - Advertise and let by contract



8

## Exceptions to Public Bid Law

- **Extreme Public Emergency**

- a catastrophic event which causes the loss of ability to obtain a quorum of the members necessary to certify the emergency prior to making the expenditure to acquire materials or supplies or to make repairs necessary for the protection of life, property, or continued function of the public entity (LSA-R.S. 38:2211.A.(6)(b))

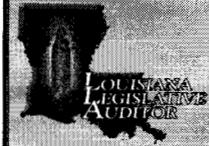


9

## Exceptions to Public Bid Law

- **Emergency**

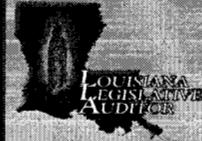
- an unforeseen mischance bringing with it destruction or injury of life or property or the imminent threat of such disruption or injury ...., where the mischance ... will not admit of the delay incident to advertising as provided in this Part (LSA-R.S. 38:2211.A.(6)(a))



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## Exceptions to Public Bid Law

- In either an emergency or an extreme emergency, the bid requirements do not apply.
- In emergency, the public entity must certify that an emergency exists and notice must be published in the official journal within 10 days.
- In extreme emergency, the mayor of the City must declare that an extreme emergency exists. This declaration must be published in the official journal within 10 days or as soon as practicable.
- LSA-R.S. 38:2212.D.(1)



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## Exceptions to Public Bid Law

- Following documentation required for each contract:
  - Written determination and findings justifying the use of this authority,
  - Written confirmation of the accepted offer, if oral offers are obtained,
  - Description of the work to be performed,
  - Name and address of each offeror,
  - Performance times and terms of each offer, and
  - Reasons for rejection if the lowest quote was not accepted
- LSA-R.S. 38:2212.D.(2)



12

## Federal Law

- Statute
- Regulations
- Policies
- Disaster Specific Guidance



13

### Statute: The Stafford Act 42 USC 5121, et seq.

- Authorizes the Public Assistance Program:
  - Gives FEMA authority to provide assistance
  - Defines basic program criteria and eligibility
  - Authorizes FEMA to publish regulations
- Provisions *cannot* be changed by FEMA



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## The Stafford Act

### Important Sections:

- 102: Definitions (§ 5122)
- 311: Insurance (§ 5154)
- 312: Duplication of Benefits (§ 5155)
- 403: Essential Assistance (§ 5170b)
- 406: Repair, Restoration, and Replacement of Damaged Facilities (§ 5172)



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## Code of Federal Regulations Title 44

- Rules to implement statute
- Based on interpretation of statute
- Formal publication and comment process
- Have the same effect as law
- May be changed by FEMA
- Procurement: 44 CFR, Part 13
- Public Assistance Program: 44 CFR, Part 206



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## Policies

- Issued by FEMA Headquarters
- Apply law/regulations to specific situations
- May be:
  - Subject-specific: Debris Removal
  - Disaster-specific: "Katrina"



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## Policies: Sources

- Public Assistance Officer:
  - Disaster-specific policies
  - Application of policies
- *Public Assistance Guide*
- *Public Assistance Policy Digest*
- *Debris Management Guide*
- FEMA Website



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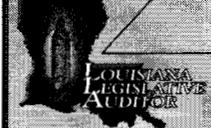
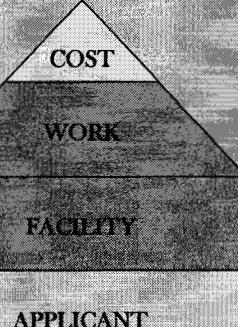
## Disaster Specific Guidance

- Issued by FEMA
- Apply law/regulations to a specific problem resulting from Hurricanes Katrina and/or Rita
- May not be used outside of the disaster for which it was issued
- FEMA website



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## General Program Eligibility



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## Public Applicants

- State governments/agencies
- Local governments:
  - Parishes
  - Cities, towns, villages, townships
  - Districts and regional authorities
- Indian tribal/Alaska native governments



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## Eligible Private Nonprofit Entities

- PNPs must:
  - Be tax-exempt according to IRS [501(e)(3)]
  - Operate as nonprofit under State law
- Facilities must:
  - Provide services open to the general public
    - Exceptions to this requirement
  - Be used primarily for eligible purpose (50%)
    - Space/time
    - Ownership



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## Eligible Private Nonprofit Entities

(Cont'd)

- Educational /Medical
- Fire/Emergency
- Utilities
- Custodial care
- Other essential government services



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## Facility

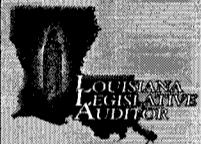
- Definitions:
  - Any building, works, system, or equipment
  - Any improved and maintained natural feature
- Examples:
  - Roads, bridges, and culverts
  - Drainage and irrigation channels
  - Schools, city halls, and other buildings
  - Water, power, and sanitary systems
  - Airports
  - Parks



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## Additional Considerations

- Active use at time of disaster
- Pre-disaster function
- Facilities under construction:
  - Responsibility of contractor: not eligible
  - Work accepted by applicant: eligible
- Facilities scheduled for replacements:
  - With Federal funds: not eligible
  - Under contract: not eligible



FEMA IS THE LAST RESORT

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## Work

- General Eligibility Criteria:
  - Direct result of disaster
  - Located in disaster area
  - Legal responsibility of an eligible applicant



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## Codes and Standards

- Codes and Standards must:
  - Apply to the repair work
  - Be appropriate to pre-disaster use
  - Be formally adopted
  - Apply uniformly to all such facilities
  - Be enforced



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## Repair vs. Replacement

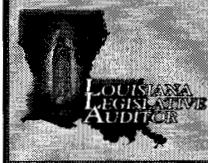
- Repair: Damages to not exceed 50% of replacement cost to pre-disaster condition
- Replacement: Based on pre-disaster design to include codes/standards
- Eligible costs limited to less expensive



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## Relocation

- Must be approved by Regional Director
- Must be cost-effective, including:
  - Site acquisition
  - New construction
  - Attendant facilities (roads, utilities)
  - Demolition of old facility



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## Ineligible Work

- Work caused by applicant negligence
- Maintenance
- Pre-existing damage



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## Cost

- To be eligible, costs must:
  - Be reasonable and necessary
  - Comply with standards for procurement
  - Exclude credits:
    - Insurance
    - Salvage
    - Some cash donations



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## Costs



LABOR



EQUIPMENT



MATERIALS

DIRECT  
COSTS

CONTRACT  
COST



32

## Force Account Labor

- Actual costs incurred by the applicant for its employees
- Includes:
  - Wages
  - Paid or credited fringe benefits
- Regular time, Compensatory time and overtime
  - Emergency v. Permanent Work
  - Pre-disaster written policy
- Highly paid personnel
- Reassigned employees
- Temporary employees
- Volunteer labor



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## Force Account Equipment

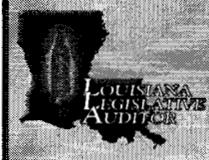
- Applicant-owned equipment: hourly rate
- Rate includes:
  - Cost of operation
  - Insurance and depreciation
  - Maintenance
- Rate does not include operator labor



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## Force Account Equipment Rates

- Types:
  - FEMA schedule of equipment rates
  - State approved rates
  - Locally developed rates
- Local rates used if lower than FEMA's
- Must obtain approval to use higher rates



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## Force Account Materials

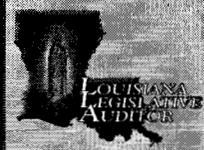
- Must be used for eligible work
- Reimbursement based on:
  - Purchase price
  - Quantities taken from applicant's stock
- Donated materials: not eligible



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## Contracts

- Eligible if:
  - Reasonable for the work completed
  - Procured
  - Contractor is not debarred or suspended



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## Contracts (Cont'd)

- Federal Procurement Methods (44 CFR 13.36):
  - Small purchase procedures
    - Less than \$100,000
    - Price quotes from adequate number of qualified sources
    - Document



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## Contracts (Cont'd)

### **– Sealed Bids (formal advertising)**

- Preferred method for construction contracts
- Requirements (CFR)
- If not used, document which reason applicable (CFR)



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## Contracts (Cont'd)

### **– Competitive proposals**

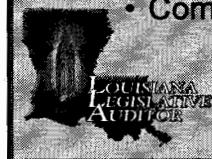
- Requirements (CFR)
- Qualifications-based procurement of architectural/engineering professional services



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## Contracts (Cont'd)

- Non-competitive proposals
  - Sole source
  - Public urgency will not permit delay of competitive procurement
  - Authorized under procedures of the awarding agency
  - Competition is inadequate



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## Contracts (Cont'd)

- Acceptable types:
  - Lump Sum
  - Unit Price
  - Cost Plus Fixed Fee
  - Time and Materials with:
    - Monitoring
    - Cost ceiling
- Unacceptable Types:
  - Cost plus percentage of cost
  - Contingency (FEMA reimbursement)



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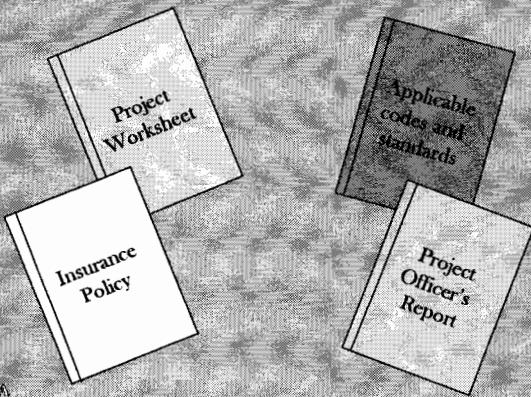
## Administrative Allowance: Applicant

- Cost of working with FEMA, State:
  - Requesting, obtaining, administering, assistance
  - Percentage of PA funds
- No documentation submitted to FEMA but is auditable
- Indirect costs: not allowed



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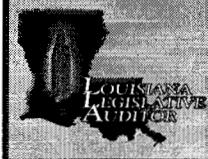
## Supporting Documents are Important



44

## Categories of Work

- Types of work:
  - Emergency work
  - Permanent work



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## Emergency Work Categories (A & B)

### Category A: Debris Removal

- Must be necessary to:
  - Eliminate threat to lives, safety
  - Eliminate threat to improved property
  - Ensure economic recovery to community
- Public property:
  - Roads:
    - To open for emergency access
    - Eligibility restricted on Federal-aid routes
  - Natural streams: must pose threat
  - Natural open space: not eligible

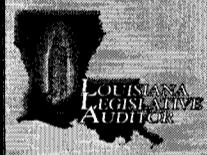


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## Emergency Work Categories

### Category A: Debris Removal (Cont'd)

- Private Property
  - Not eligible, unless:
    - necessary to remove health/safety hazard
    - owner has moved debris to right-of-way
  - Routine garbage pick-up: not eligible



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## Emergency Work Categories

### Category B: Emergency Protective Measures

- Necessary to eliminate threat:
  - To lives, public health, safety
  - Of additional damage to improved property
- Police, fire, and rescue response
- Emergency access
- Emergency communications
- Snow removal

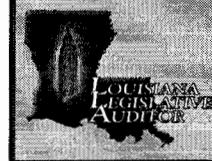


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## Emergency Work Categories

### **Category B: Emergency Protective Measures (Cont'd)**

- Temporary levees, sandbagging, and pumping
- Health and safety measures
- Emergency and temporary repairs



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## Permanent Work Categories (C & D)

### **Category C: Roads and Bridges**

- Eligible features include:
  - Roads/shoulders
  - Bridges
  - Culverts
  - Associated drainage facilities
- Maintenance items are not eligible

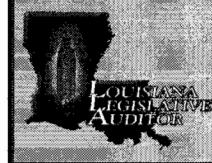


50

## Permanent Work Categories

### Category C: Roads & Bridges (Cont'd)

- Federal-aid roads:
  - Major/minor arterials, collectors
  - Fall under authority of FHWA
  - Permanent repairs are not eligible
  - Includes all facilities within right-of-way



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## Permanent Work Categories

### Category D: Water Control Facilities

- Typical facilities include:
  - Dams and reservoirs
  - Drainage and irrigation channels/facilities
  - Levees
  - Shore facilities other than beaches

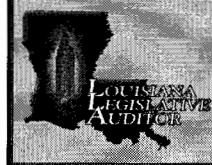


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## Permanent Work Categories

### Category D: Water Control Facilities (Cont'd)

- Flood Control Works (FCWs):
  - Provide protection from floods
  - Include levees, dams, flood channels
  - Fall under authority of USACE or NRCS
  - Permanent repairs are not eligible
  - Emergency work may be eligible



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## Permanent Work Categories

### Category E: Buildings and Equipment

- Typical facilities include:
  - Schools, administrative centers, and other buildings
  - Building contents and systems
  - Equipment
  - Vehicles
- Additional eligible items:
  - Removal of mud, silt, debris
  - Cleaning and painting
  - Demolition
  - Supplies and inventory
  - Library books and publications



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## Permanent Work Categories

### Category E: Buildings and Equipment (Cont'd)

- Pay close attention to:
  - Insurance
  - Floodplain management
  - Codes and standards
  - Depreciation of vehicles and equipment



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## Permanent Work Categories

### Category F: Utilities

- Typical facilities include:
  - Water treatment and delivery
  - Power generation and distribution
  - Sewage collection and treatment
- Damage Assessment:
  - Owner's responsibility
  - Eligible if damage is discovered
- Not eligible:
  - Lost revenue
  - Increased operating expenses



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## Permanent Work Categories

### Category G: Parks, Recreational, and Other

- Typical facilities include:
  - Parks
  - Public recreational facilities:
    - pools
    - ball fields
    - playgrounds
  - Public cemeteries
  - Improved and maintained beaches

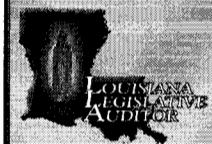


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## Permanent Work Categories

### Category G: Parks, Recreational and Other (Cont'd)

- Not eligible:
  - Trees and other plantings, regardless of purpose
  - Natural beaches
  - PNP recreational facilities



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